UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

LAWRENCE E. JAFFE PENSION PLAN, On Behalf of Itself and All Others Similarly Situated, Plaintiff, vs. HOUSEHOLD INTERNATIONAL, INC., et al., Defendants.	Lead Case No. 02-C-5893 (Consolidated) CLASS ACTION Judge Ronald A. Guzman Magistrate Judge Nan R. Nolan

REPLY IN SUPPORT OF THE CLASS' MOTION TO COMPEL HOUSEHOLD DEFENDANTS' RESPONSES TO THE THIRD SET OF INTERROGATORIES

REDACTED VERSION

TABLE OF AUTHORITIES

Page

The Class submits the following Reply in support of the Class' Motion to Compel defendants Household International, Inc. ("Household" or "Company"), Household Finance Corporation, William F. Aldinger ("Aldinger"), David A. Schoenholz ("Schoenholz"), Gary Gilmer ("Gilmer") and J.A. Vozar (collectively, "defendants") to supplement their responses to Lead Plaintiffs' Third Set of Interrogatories ("Interrogatories"):

I. INTRODUCTION

As demonstrated by the Class' opening brief, in responding to the Interrogatories, defendants did not fulfill their obligations under the Federal Rules of Civil Procedure. Although heavy on rhetoric, defendants' Opposition fails to justify their refusal to fully and completely respond to the Interrogatories.[1] Defendants have not explained why they should not be compelled to identify individuals with relevant knowledge and responsibilities. They have not supported their repeated refrains of "undue burden." They have not met their burden in establishing privilege and they have not explained defendants' Aldinger's, Schoenholz's and Gilmer's refusal to provide even a single substantive response. Instead, defendants' Opposition, in which they abandon previously asserted objections by the wayside and blatantly ignore salient facts, confirms that defendants' original objections were ill-considered and unjustified. As discussed below, the Class' motion should be granted.

II. ARGUMENT

A. Defendants Must Identify Their Public Statements Regarding Predatory Lending, Charge-Offs and Reaging (Interrogatory Nos. 28, 34 and 39)

The Class alleges that Household's false statements to the public regarding the Company's predatory lending, charge-off and reaging policies and practices inflated the Company's stock price throughout the Class Period and ultimately contributed to billions of dollars in market losses. These statements are at the very heart of this case. By refusing to identify Household's public statements on these topics, defendants improperly seek to deny the Class its right to use interrogatories to "transform the facts into evidence that can be readily used at trial." *Wilson Land Corp. v. Smith Barney, Inc.*, No. 5:97CV519, 2000 WL 33672980, at *3 (E.D.N.C. Dec. 8, 2000) (citation omitted). While defendants are correct that the Class has identified numerous false statements in its Complaint

[1] The terms "Opposition" and "Defs' Opp." refer to defendants' Memorandum of Law in Opposition to Lead Plaintiffs' Motion to Compel Household Defendants' Responses to Third Set of Interrogatories.

(Defs' Opp. at 3), this does not excuse them from responding to the Interrogatories here. *Id.* Responses to Interrogatory Nos. 28, 34 and 39 are necessary not only to discover all of the public representations defendants made regarding these topics (including statements made by management to analysts and rating agencies), but also whether Household denies responsibility for the statements already identified.

It is clear that Household intends to deny that certain statements attributed to the Company were actually made. For example, in their Opposition, defendants refer to the false and misleading statements identified in the Complaint as "***alleged*** statements." Defs' Opp. at 3 (emphasis added). Defendants cannot wait until trial to disclose which statements they admit were made by Household, and which they contend were not.

Responding to Interrogatory Nos. 28, 34 and 39 would not impose undue burden on defendants. Defendants have completely abandoned their primary position that they are excused from responding because the Class "maintains Defendants' document production in searchable form [and] therefore can conveniently search for the requested information." Brooks Decl., Ex. K at 43, 52 and 59-60. Instead, without support, defendants attempt to justify their obstinacy by claiming a proper response would require a "company-wide investigation" for statements made by "***any*** of [Household's] thousands of employees" as well as interviews of "countless" former employees. Defs' Opp. at 3. Defendants vastly exaggerate the burden of responding to these Interrogatories. Their position rests on the assumption that each and every Household employee (including "countless" employees who no longer work for the Company) was authorized to make public statements on behalf of Household. Defs' Opp. at 3. This suggestion strains credulity and certainly has not been established through "affirmative proof in the form of affidavits or record evidence," as required. *In re Sulfuric Acid Antitrust Litig.*, 231 F.R.D. 351, 360 (N.D. Ill. 2005). In fact, the opposite is true.

Given the focus Household placed on managing public perception regarding its lending practices ***defendants likely are aware*** of all of Household's public statements responsive to Interrogatories Nos. 34 and 39. Even if they are not, they can easily discover the vast majority of such statements by reviewing the files and speaking to members of Household's "Responsible Lending Rapid Response Team." The "Responsible Lending Rapid Response Team" was formed in 2000 and was responsible for gathering information and "rapidly respond[ing] to 'immediate'

customer inquiries from the media and/or other parties regarding predatory lending allegations." Brooks Reply Decl.,[2] Ex 1. Members of the team were charged with ensuring that "appropriate communicator[s]" were apprised of issues related to predatory lending so that the Company could advantageously convey its message to the public. *Id.* Rather than consult this small group and others likely to have made or witnessed such statements (*i.e.*, the people at Household whose responsibilities included interacting with the media, securities analysts and rating agencies), defendants opted to assert their frivolous objections. Defendants' choice is hardly atypical.

Defendants' undue burden argument is unsubstantiated and flimsy – there is no real burden with obtaining the information sought by the Class. Accordingly, defendants should be compelled to respond to Interrogatory Nos. 28, 34 and 39.

B. Defendants Must Respond to Interrogatories Fully and Completely by Identifying Individuals as Opposed to Groups or Entire Companies (Interrogatory Nos. 22-23, 26, 38, 44 and 52)

The dispute over these Interrogatories relates to whether the defendants may limit their responses to the identification of companies and groups of employees, rather than identify individuals. Defendants must justify these limitations in the face of the liberal policy favoring discovery. They have not done so. Moreover, defendants' position also contradicts this Court's explicit instructions to cooperate with the Class in prioritizing depositions – identifying companies and departments rather than individuals does not foster such prioritization.

Not surprisingly, defendants did not cite a single case holding that a party responding to interrogatories can withhold the names of individuals with relevant knowledge and/or responsibilities. Nor did defendants address in any way the Court's prior orders, requiring them "to identify witnesses with knowledge of the facts" sought by the Class. *See* November 10, 2005 Order at 5; *see also* February 17, 2006 Order (requiring defendants to identify all individuals responsible for training). Instead, as discussed below, defendants instead offer flimsy and unsupported excuses (or provide no excuse at all) for their failure to respond completely.

1. Interrogatory Nos. 38 and 44

With respect to Interrogatory No. 38, defendants make no attempt to explain their failure to identify the individuals within Household's Corporate Accounting Department who were responsible

---

[2] "Brooks Reply Decl." refers to the Reply Declaration of Luke O. Brooks in Support of the Class' Motion to Compel Household Defendants' Responses to the Third Set of Interrogatories, filed herewith.

for determining the accounting treatment to address the litigation risk associated with Household's predatory practices. Defs' Opp. at 5. Similarly, defendants offer no explanation as to why they did not identify the specific employees in Household's Consumer Lending Business Unit who "estimated the financial impact of enacting potential Best Practices initiatives . . ." as requested by Interrogatory No. 44. Brooks Decl.,[3] Ex. K at 67. With 32,000 employees in the Company, the Class' requests are imminently reasonable. Because defendants have taken no steps and advanced no argument to justify their partial responses to Interrogatory Nos. 38 and 44, they should be required to furnish full responses.

2. Interrogatory Nos. 22 and 23

With respect to Interrogatory Nos. 22 and 23, defendants know the identities of the individuals sought by the Class, they simply refuse to disclose them. Defs' Opp. at 5-6. They contend their failure to identify the individuals from Arthur Andersen and KPMG who participated in Household's decision to restate its financials is "justified" because "the accounting firm as a whole audits the financial statements." Defs' Opp. at 5. This is absurd, particularly given defendants' vehement objections to the Class' request for a greater number of depositions commensurate with the complex factual background and the lengthy Class Period at issue here. Each firm had numerous employees assigned to Household's audits. If those employees participated in Household's decision to restate $600 million in pre-tax earnings, the Class is entitled to discover who these people were, or, at a minimum, the most knowledgeable individual. Equally absurd is defendants' contention that the audit committee made a "group decision" to restate and thus defendants need not to identify the Household employees who participated in that decision. Defs' Opp. at 5-6. Defendants' excuses are nothing more than word games.[4] Their Opposition confirms that defendants know who participated in the restatement decision making process. There is no

---

[3] "Brooks Decl." refers to the Declaration of Luke O. Brooks in Support of Compliance with Local Rule 37.2 and the Class' Motion to Compel Responses to Third Set of Interrogatories from Household Defendants.

[4] Perhaps recognizing how ridiculous their excuses sound, defendants did not offer any specific justification for failing to properly respond to Interrogatory No. 23.

burden whatsoever attached with identifying these individuals. Defendants simply refuse to divulge this information to the Class.[5] They should be required to do so.

3. Interrogatory No. 26

With respect to Interrogatory No. 26, defendants argue that they need only identify "core" employees with knowledge about whether Household's charge-off and reaging policies followed industry standards closely. Defs' Opp. at 6. Defendants have not even satisfied their own standard: ***their response to Interrogatory No. 26 does not list a single individual.*** Brooks Decl. Ex. K, at 38-40. Instead, Household identifies the "core" group as those "who participated in or reviewed a certain 'benchmarking study'" and then claims that it would be burdensome to identify every person who reviewed the study. Defs' Opp. at 6. This is a straw man. It is one thing to limit one's inquiry to core groups which will likely possess the knowledge. It is quite another to invent a core group and then refuse to identify the individuals within that group who possess relevant knowledge. At the very least, defendants should be required to identify those Household employees who participated in the study. Furthermore, defendants offer no excuse for failing to identify which of the small group of individuals listed in Interrogatory No. 27 in fact had knowledge of whether the Company's charge-off and reaging policies were consistent with the rest of the industry. Again, defendants should not be permitted to hide behind their own ambiguity.

Neither case cited by defendants supports their refusal to identify individuals with relevant knowledge. In *In re Priceline.com Inc. Sec. Litig.*, 233 F.R.D. 83 (D. Conn. 2005), the court found that defendants' response ***listing the individuals*** "'primarily involved'" and "'primarily familiar with'" the issues in question was sufficient. *Id.* at 87. Defendants listed ***no*** individuals. In *Birnberg v. Milk Street Residential Assocs. LP*, discovery was limited to jurisdictional issues. No. 02 C 978, 2002 U.S. Dist. LEXIS 9321 (N.D. Ill. May 22, 2002). The interrogatory at issue did not seek identification of individuals, but rather travel information which the court found would have no bearing on the question of jurisdiction. *Id.* at *19. Thus, neither of the cases cited by defendants has any relevance whatsoever to the question here: whether defendants should be required to disclose the

---

[5] Defendants were similarly vague on this issue in their initial disclosures which list (1) a designee from Household's audit committee, (2) a representative from KPMG and (3) a representative from Arthur Andersen as individuals likely having discoverable information that defendants may use to rebut the Class' claims and/or support their defenses. The Class has requested that defendants update these disclosures to identify the names of these individuals so that we can notice their depositions. Brooks Reply Decl., Ex. 2. Defendants refused. Brooks Reply Decl., Ex. 3.

identity of individuals with knowledge about whether Household's charge-off and reaging policies followed industry standards.

4. Interrogatory No. 52

Defendants are correct that Interrogatory No. 52 does not on its face seek the identity of individuals. However, given that defendants re-defined Interrogatory No. 52 and identified only what "some Household employees" considered to be predatory practices, they have an obligation to identify who those people are. Otherwise, defendants' response is useless. Brooks' Decl., Ex. K at 78. Obviously, defendants know the names of the employees to whom they ascribed the listed definition of predatory lending. There is no reason for defendants to withhold those names. Furthermore, the response does not indicate how the individual defendants understood predatory lending. At the very least, defendants should be required to identify whether this definition of "predatory lending" was held by any of the individual defendants and, if not, how the individual defendants defined the term. *Id.*

C. Defendants Must Identify All of the Reasons Household Settled With the Multistate Attorney General Group Interrogatory No. 36

1. The Decision to Settle Is Not Privileged

Defendants must disclose all of the reasons Household entered into a $484 million settlement with the Multistate Attorney General ("AG") Group. At the time Household entered into the settlement, the Company had projected that restitution based on the Multistate AG Group's allegations could total ***more than $3 billion***. Brooks Reply Decl., Ex. 4. During the October 11, 2002 conference call held to announce the settlement, Aldinger told the market: "We could have litigated. But the headline risk and the reputation risk over an extended period would have been worse for the company." Brooks Reply Decl., Ex. 13. During the same call, Schoenholz stated: "We preserved the business model for the future and protected the earnings run rate." *Id.* The Class is entitled to discover ***all*** of the specific reasons Household entered into this settlement in narrative form.

None of the reasons Household entered into the settlement agreement are protected by the attorney-client privilege or the work product doctrine. *Nat'l Union Fire Ins. Co. v. Continental Ill. Group*, No. 85 C 7080, 1988 U.S. Dist. LEXIS 7826, at *4 (N.D. Ill. July 21, 1988) (allowing plaintiffs to depose the defendant corporation's general counsel regarding his recommendation to the board of directors that the company settle a securities fraud suit). *Id.* Because the decision to settle

is inherently a business decision, the reasons Household entered into that decision cannot be withheld. *Id.*

Unable to escape this truism, defendants claim that under *Nat'l Union* communications are not privileged only "when the decision to settle is purely a business decision." Defs' Opp. at 10. This is a distinction without a difference. As the opinion clearly states, where an in-house lawyer recommends that the corporate client settle, this is a business decision. *Nat'l Union*, 1988 U.S. Dist. LEXIS 7826, at **3-4. In addition, the limited response defendants did provide establishes that at its core, settling with the Multistate AG Group was a business decision. Brooks Reply Decl., Ex. 13. Accordingly, defendants must list all reasons Household settled with the Multistate AG Group.

Remus v. Sheahan, cited by defendants, does not compel a different result. No. 05 C 1495, 2006 U.S. Dist. LEXIS 37231 (N.D. Ill. May 23, 2006). In *Remus*, the party who sought to invoke the attorney-client privilege was an individual, not a public corporation. *Id.* at *3. There was no discussion of whether the entering into the settlement was a business decision. In fact, there was no dispute at all in *Remus* regarding whether the communications and documents at issue were privileged.[6] *Id.* at *5. The question addressed was whether the privilege had been waived.[7] *Id.* at *5.

Even if the reasons for settlement could be privileged, defendants have not satisfied their burden of establishing that the information they are withholding in response to this interrogatory is privileged. *United States v. First State Bank*, 691 F.2d 332, 335 (7th Cir. 1982) (the party seeking to invoke the privilege has the burden of establishing all of its essential elements). "The claim of privilege must be made and sustained on a question-by-question or document-by-document basis; ***a blanket claim of privilege is unacceptable***." *United States v. Lawless*, 709 F.2d 485, 487 (7th Cir. 1983) (emphasis added). Defendants make no attempt to demonstrate how listing the reasons

---

[6] The quotation cited in defendants' Opposition is misleading. Defs' Opp. at 9-10. The court in *Remus* did not "recognize" that the communications were privileged, it stated that: "***[t]he parties generally agree*** that the communications or documents at issue are either attorney-client communications or work product which ordinarily would not be subject to discovery." *Remus*, 2006 U.S. Dist. LEXIS 37231, at *5.

[7] The other cases cited by defendants, *Chemcentral/Grand Rapids Corp. v. United States EPA*, No. 91 C 4380, 1992 U.S. Dist. LEXIS 12539 (N.D. Ill. Aug. 20, 1992) and *Mattenson v. Baxter Healthcare Corp.*, 438 F.3d 763, 768 (7th Cir. 2006), are also inapplicable. Neither involved a decision to settle. *Chemcentral* is an opinion on summary judgment. The quotation cited from that case, moreover, stands for the unremarkable proposition that documents prepared in anticipation of litigation are protected by the work product doctrine. *Mattenson*, 438 F.3d at 768 stands for the same proposition.

Household entered into the settlement would reveal attorney-client communications or attorney mental impressions. Defendants have not identified whether they are asserting this "privilege" over a conversation, document, investigation or something else. They do not identify which attorney(s) they claim have privileged information (if this is even what they claim). In fact, defendants have provided absolutely no information to the Class or the Court to assess their privilege claim. Having failed to satisfy their burden, defendants must identify all of the reasons why Household entered in the Multistate AG Group settlement.

2. Defendants' Use of Federal Rule of Civil Procedure 33(d) is Improper

The Class demonstrated in its opening brief that defendants' reliance on Rule 33(d) is improper. As this Court held in its November 10, 2005 Order compelling defendants to respond to the Class' First Set of Interrogatories, "because of the complexity of this case, defendants may not rely on Rule 33(d) to avoid providing a written narrative." November 10, 2005 Order at 6.

Numerous courts have held that designating documents from which an answer can be derived does not "state the facts." *SEC v. Elfindepan, S.A.*, 206 F.R.D. 574, 576-78 (M.D.N.C. 2002) (holding that requests for statements of facts "do not lend themselves to answer by use of Rule 33(d)"); *see also In re Savitt Adler Litig.*, 176 F.R.D. 44, 49-50 (N.D.N.Y. 1997) (documents normally reveal evidence, not a party's contentions or statement of facts); *Daiflon, Inc. v. Allied Chem. Corp.*, 534 F.2d 221, 226 (10th Cir. 1976); *ITT Life Ins. Co. v. Thomas Nastoff, Inc.*, 108 F.R.D. 664, 666 (N.D. Ind. 1985).

Without citing a single case themselves, defendants attempt to distinguish this well established authority by claiming that interrogatories seeking "all reasons" are somehow different from those seeking "all facts." Defs' Opp. at 9. Of course, they do not explain how this semantic difference changes the analysis or excuses them from properly responding. Nor do they identify any burden associated with providing proper responses. Defendants' reluctance to take a firm position and reveal damaging information does not justify the use of Rule 33(d). A narrative response is required.

D. Defendants Must Identify the Time Period During Which Household Employees Used the "Effective Rate" Presentation to Sell Loans (Interrogatory No. 49)

By propounding Interrogatory No. 49 the Class sought to discover the time period during which Household employees used the "effective rate" comparison to sell loans. Brooks Decl., Ex. K

at 73. Defendants did not answer this interrogatory, but instead cited training materials and policy bulletins. Defs' Opp. at 13. Household has not justified its evasive response to Interrogatory No. 49.

Again, defendants resort to hyperbole, contending that "[i]n order to provide any greater specificity" they would have to speak to "every individual who worked at Household during the Class Period." Defs' Opp. at 13. Defendants' suggestion that they cannot determine the time period during which account executives used the "effective rate" presentation to sell loans without undergoing substantial burden is simply false.

During the Class Period, Household maintained several systems on which it tracked customer complaints. These systems contained information that could be ***"drilled down to any level of detail."*** Brooks Reply Decl., Ex. 5. All that is needed to respond to Interrogatory 49 is a simple consultation of these databases. Indeed, it appears from documents produced by the Company that Household already has performed much of the necessary inquiry. In July 2002, Household's senior management ordered a study "to identify complaints in which the customer indicated they were led to believe the contract rate on the loan would be lower if the customer enrolled in a bi-weekly payment program (herein referred to as the 'effective rate complaint')."[8] Brooks Reply Decl. Ex. 6. Using their complaint databases, Household's Regulatory Compliance Risk Management Team compiled a report containing detailed findings regarding effective rate complaint statistics by: (a) state; (b) state and year; (c) branch number; (d) branch location and month; (e) month; and (f) a listing of all effective rate complaints. *Id.* Thus, Household has ready access to the information sought. Defendants cannot dodge the question simply because the response is damaging to defendants' position. Discovery in federal courts is not guerilla warfare.

---

[8] The individual defendants -- Aldinger, Schoenholz, Gilmer and J.A. Vozar were all members of Household's senior management in July 2002.

E. Interrogatory Nos. 29 and 33 Seek Relevant Information

Interrogatory Nos. 29 and 33, which seek to discover the impact that changing to bank-like policies would have had on Household's reported financials and the financial information provided to the rating agencies, are relevant for a number of different reasons. Moreover, defendants' have not established that the burden of responding outweighs the probative value of the information sought.

In its opening motion, the Class established that Interrogatory Nos. 29 and 33 are relevant to the determination of whether Household's Class Period statement that "[a]pplying bank regulatory rules would barely increase the amount of charge-offs" was materially false and misleading. Brooks Decl., Ex. R. In fact, by Household's estimate, changing to bank-like policies would have increased consumer charge-offs ***by more than $1.7 billion or 39%***. Brooks Reply Decl., Ex. 7. This fact alone establishes the relevance of the information sought by Interrogatory Nos. 29 and 33. In typical fashion, defendants completely ignore this point in their Opposition. But they cannot hide from the obvious relevance of these Interrogatories by sticking their collective heads in the sand, the Interrogatories must be answered.

In addition, throughout the Class Period, Household engaged in a practice of selling delinquent loans originated in its banking subsidiaries to other portions of the business in order to avoid the FFIEC's[9] more stringent charge-off and reaging requirements. Brooks Reply Decl., Ex. 12. Once a loan was sold from Household's banking subsidiaries to one of Household's non-banking entities, Household no longer followed the FFIEC's stringent reaging, re-writing and charge-off guidelines. *Id.* The Office of Thrift Supervision ("OTS") found that this practice allowed [redacted][10] Brooks Reply Decl., Ex. 12. The OTS also concluded that had Household followed FFIEC accounting guidelines and practices, [redacted] than reported, and forced the Company to [redacted] *Id.* The Class is entitled to know if defendants reached the same conclusion.

---

[9] "FFIEC" refers to the Federal Financial Institutions Examination Council.

[10] The OTS also found that this practice distorted the analysis of Household's loan loss reserves and classified assets. Brooks Reply Decl., Ex. 12.

Furthermore, defendants' contention that "only the loans of the Banking Subsidiaries were subject to FFIEC guidelines" is misleading. Defs' Opp. at 8. At the same time as the OTC was cracking down on Household's sales of delinquent loans to non-bank affiliates, the Office of the Controller of Currency ("OCC") – which had cautioned Household in the past that its reaging policies were "liberal" (Brooks Reply Decl., Ex. 8) – informed Household that it would [redacted] Brooks Reply Decl., Ex. 9. Thus, per the OCC, Household would no longer be able to [redacted] Brooks Reply Decl., Ex. 10. Interrogatory Nos. 29 and 33 seek to discover the impact of this change on Household's financial numbers as reported to the public and the rating agencies, as well as on the Company's ability to obtain funding. Defendants cannot withhold this relevant information.

F. Defendants Must Respond to Interrogatory Nos. 40-42

1. The Information Sought By Interrogatory Nos. 40-42 Is Relevant to Prove the Class' Predatory Lending Allegations

Defendants contend that Interrogatory Nos. 40-42 are of marginal relevance because, according to them, the data the Class seeks was "not tracked by management" during the Class Period. Defs' Opp. at 11. Defendants' argument misses the point. Interrogatory Nos. 40-42 seek to discover information relevant to prove that Household engaged in a pattern of predatory lending with respect to: (1) discount points and origination fees; (2) loans with high loan-to-value ("LTV") ratios; and (3) prepayment penalties. Unless defendants are willing to concede that the Class' predatory lending allegations are true, the Class is entitled to this discovery.

For example, the Class alleges in its Complaint that Household charged discount points on loans that bore no relation to interest rates charged. Complaint ¶52(b). The Class also alleges that Household improperly upsold second loans which its customers would not have needed but for the unconscionable and often undisclosed fees Household regularly charged on the first loans. Complaint ¶75. Interrogatory No. 40 seeks data relevant to proving these allegations. Information regarding the number of loans with high points and fees (over 7%) along with the average interest rate on those loans is relevant to prove that Household in fact did not use discount points to buy down interest rates. Similarly, information regarding the number of loans with high points and fees that also have a second loan is relevant to prove that customers were forced to take out second loans simply to pay off the fees on their first loan. Interrogatory Nos. 41-42 are similarly tailored to

discover information which will prove the Class' allegations regarding loans with high LTV's and prepayment penalties, respectively.

Subparts (c) and (d) of Interrogatory No. 42 seek information regarding (1) restitution Household paid for its abusive use of prepayment penalties made to borrowers who booked loans during the Class Period and (2) changes the Company made to its prepayment penalty provisions as part of the Multistate AG Group settlement. Although Household paid restitution and changed the terms of mortgage agreements after the Class Period, the information sought relates to loans originated during the Class Period. The amount of restitution Household paid has direct relevance to the Class' allegations that Household's financial results were inflated during the Class Period as the result of predatory lending practices. Likewise, the number of loans on which Household was forced to change terms is directly relevant to the pervasiveness of Household's bad acts during the Class Period. Accordingly, the reasoning outlined in the Court's June 15, 2006 Order does not apply.[11]

2. Defendants Have Not Demonstrated that Responding to Interrogatory Nos. 40-42 Would Impose an Undue Burden

Defendants claim that responding to Interrogatory Nos. 40-42 would constitute undue burden. Prior to filing its motion, the Class repeatedly requested that defendants identify the cost of compiling these statistics, as they were ordered to do with respect to certain of the interrogatories in the Class' Second Set of Interrogatories. Brooks Decl., Ex. D. Defendants repeatedly refused. Now, after the Class and the Court have been forced to expend resources on this motion to compel, defendants contend based solely on the Affidavit of Diane Giannis in support of their Opposition that the cost of responding to Interrogatory Nos. 40-42 would total $26,600. Defs' Opp. at 11. Defendants offer no excuse for why this information was previously withheld.

Ms. Giannis, moreover, has proven unable to accurately estimate the cost for such projects. For example, Ms. Giannis submitted an affidavit regarding the cost of responding to the Class' Second Set of Interrogatories, in which she swore it would take an estimated 52 business days at a cost of $23,000 to respond to certain of the Class' interrogatories relating to the quantification of

---

[11] In addition, the information sought is relevant to the Class' allegation that after Household was forced to curb its predatory practices by the AGs, it also was forced to dramatically alter its business model. Without lengthy prepayment penalties on all of its loans, Household customers were able to more easily refinance their loans, which was a contributing factor in making Household's securitizations increasingly less attractive to the debt markets and inhibited the Company's ability to raise capital.

certain practices. Giannis Aff. (Docket No. 402) at ¶5. A month later, defendants retracted this estimate and indicated that the real cost was ***nothing*** for the period of January 1, 1999 through October 5, 2002. Brooks Reply Decl., Ex. 11. At most, extracting the monthly volume information for active, closed-end loans originated from 1997 to October 2002 that had discount points, would only cost $2,700. *Id.* In light of this incredible gap, this Court should view Ms. Gianni's current declaration and cost estimate with a healthy dose of skepticism.

Even if given credence, Ms. Giannis' estimated expense of $26,600 is not unduly burdensome given the relevance of the information sought and the importance of this action. Household investors lost ***billions*** of dollars during and immediately following the Class Period. Perhaps it is because their exposure is so high that defendants are content to rack up legal fees in an attempt to hide the ball rather than disclose relevant, albeit damaging, information. Household should not be permitted to wield its apparently unlimited resources to obscure the truth.

G. Defendants' Method of Counting Is Improper and They Must Respond to Interrogatory No. 56

Faced with the uncomfortable prospect of having to further define their position regarding the many complex aspects of this case, defendants seek to curtail the Class' valid discovery by improperly counting single interrogatories as up to five. Of course, when challenged, defendants are unable to justify their position. Defendants tacitly concede that their count for all but two of the Interrogatories was overreaching and improper by failing to even address them. Defs' Opp. at 14-15. Conveniently, defendants do not discuss Interrogatory No. 27. Defendants counted this which asks for identification of all individuals involved in formulating or amending the charge-off policies, as five interrogatories (34-39) because there are five Household business units. Defendants similarly do not even attempt to defend their miscount of Interrogatory No. 40 as three interrogatories (58-60), despite the fact that the interrogatory seeks information on loans where the origination fee and discount points were in excess of 7%. Perhaps this is because defendants failed to respond to Interrogatory No. 40 in any way. *See also* Brooks Decl., Ex. K at 43 and 61-63 (counting three interrogatories as 12, without providing a single substantial response).

Recognizing the absurdity of their counting procedure, defendants now contend in a footnote that Interrogatory No. 56 is subject to the attorney-client privilege and work product doctrine. Defs' Opp. at 15. This objection is not well taken, given that defendants answered the exact same question with respect to the Class' Second Set of Interrogatories. *See* Brooks Decl., Ex. K. In any event, the identification of persons who supplied information contained in defendants' interrogatory responses

is not privileged. *EEOC v. Jewel Food Stores, Inc.*, 231 F.R.D. 343, 346-47 (N.D. Ill. 2005) ("the work product doctrine, which 'provides an exception to the otherwise liberal discovery rules,' does not protect factual information that a lawyer obtains when investigating a case" (internal citation omitted)). Accordingly, "the work product concept furnishes no shield against discovery, by interrogatories or by deposition, of the facts that the adverse party's lawyer has learned, ***or the persons from whom he has learned such facts. . . .*** " *Id.* (internal quotations omitted, emphasis added) (quoting *Board of Edun. of Evanston Twnsp. HighSch. Dist No. 202 v. Admiral Heating and Ventilating, Inc.*, 104 F.R.D. 23, 32 (N.D. Ill. 1984). Based on these long-standing principles, the court in *Jewel* rejected defendants' argument that interrogatories seeking "the identities of persons who have information or who have made statements relating to the claims or defenses in the case, the substance of the information they possess, and the statements they have made" were privileged and ordered them to respond. *Id.* at 346. The same reasoning applies here. The information sought by Interrogatory No. 56 is not subject to any privilege and defendants should be ordered to respond.

III. CONCLUSION

For all the foregoing reasons, as well as the reasons outlined in the Class' opening brief and declarations in supports of the briefs the Court should compel the Household defendants, including individual defendants Aldinger, Schoenholz and Gilmer, to provide complete and full responses to the Interrogatories.

DATED: July 21, 2006

Respectfully submitted,

LERACH COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
PATRICK J. COUGHLIN (90785466)
AZRA Z. MEHDI (90785467)
D. CAMERON BAKER (154452)
MONIQUE C. WINKLER (90786006)
LUKE O. BROOKS (90785469)
MARIA V. MORRIS (223903)
BING Z. RYAN (228641)

s/ Luke O. Brooks
LUKE O. BROOKS

100 Pine Street, Suite 2600
San Francisco, CA 94111
Telephone: 415/288-4545
415/288-4534 (fax)

LERACH COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
WILLIAM S. LERACH
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

Lead Counsel for Plaintiffs

MILLER FAUCHER AND CAFFERTY LLP
MARVIN A. MILLER
30 North LaSalle Street, Suite 3200
Chicago, IL 60602
Telephone: 312/782-4880
312/782-4485 (fax)

Liaison Counsel

LAW OFFICES OF LAWRENCE G.
SOICHER
LAWRENCE G. SOICHER
110 East 59th Street, 25th Floor
New York, NY 10022
Telephone: 212/883-8000
212/355-6900 (fax)

Attorneys for Plaintiff

T:\CasesSF\Household Intl BRF00033142_redacted.doc

DECLARATION OF SERVICE BY EMAIL AND BY U.S. MAIL

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and employed in the City and County of San Francisco, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 100 Pine Street, Suite 2600, San Francisco, California 94111.

2. That on July 21, 2006, declarant served by electronic mail and by U.S. Mail the **REPLY IN SUPPORT OF THE CLASS' MOTION TO COMPEL HOUSEHOLD DEFENDANTS' RESPONSES TO THE THIRD SET OF INTERROGATORIES** to the parties listed on the attached Service List. The parties' email addresses are as follows:

TKavaler@cahill.com
PSloane@cahill.com
PFarren@cahill.com
DOwen@cahill.com
NEimer@EimerStahl.com
ADeutsch@EimerStahl.com
mmiller@millerfaucher.com
lfanning@millerfaucher.com

and by U.S. Mail to:

Lawrence G. Soicher, Esq.
Law Offices of Lawrence G. Soicher
110 East 59th Street, 25th Floor
New York, NY 10022

David R. Scott, Esq.
Scott & Scott LLC
108 Norwich Avenue
Colchester, CT 06415

I declare under penalty of perjury that the foregoing is true and correct. Executed this 21st day of July, 2006, at San Francisco, California.

s/ Marcy Medeiros
MARCY MEDEIROS